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SUPREME COURT, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1960.

No. 825

ALATEX CONSTRUCTION SERVICE, INC.,
COMMUNITY FINANCE SERVICE, INC.,
PUBLIC DISCOUNT COMPANY, INC.,
Appellants.

versus

ERNEST CRAWFORD,
Appellee,

(CONSOLIDATED CASES.)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

JURISDICTIONAL STATEMENT.

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PUBLIC DISCOUNT COMPANY, INC.,
Appellants.

versus

ERNEST CRAWFORD,
Appellee,

(CONSOLIDATED CASES.)

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana.

JURISDICTIONAL STATEMENT.

May It Please The Court:

Appellants appeal from the several Judgments of the Court of Appeal, Fourth Circuit, State of Louisiana, (formerly Court of Appeal, Parish of Orleans—Louisiana Constitution Article 7 Sec. 20, 21 effective Jan. 1, 1961)

entered on November 30, 1959, as affirmed on Rehearing by the Court of Appeal, Fourth Circuit, by Judgments entered on June 8, 1960. Writs of Certiorari and Review were denied by the Supreme Court of the State of Louisiana, on October 5, 1960. The several cases were consolidated for trial in the trial and Appellate Courts of the State of Louisiana, and pursuant to Rule 15 (3) of the Rules of the Supreme Court of the United States a single Jurisdictional Statement is filed herewith covering all the said cases.

OPINIONS BELOW.

The Judgment of the First City Court for the City of New Orleans (the Court of original jurisdiction) is not reported. The opinions of the Court of Appeal for the Parish of Orleans, Louisiana on original Hearing and on Rehearing in the case of *Ernest Crawford vs. Alatex Construction Service, Inc.*, is reported in 120 So. (2) 845 (Appendix A *infra*, Page 18). The opinion on original Hearing and on Rehearing in the case of *Ernest Crawford vs. Community Finance Service, Inc.*, is reported in 120 So. (2) 854 (Appendix B, *infra* Page 40). The opinion on original Hearing and on Rehearing in the case of *Ernest Crawford vs. Public Discount Co.; Inc.*, is reported in 120 So. (2) 855 (Appendix C, *infra* Page 42). All original Opinions were entered November 30, 1959, and all Opinions on Rehearing were entered June 8, 1960.

Appellants herein applied to the Supreme Court of the State of Louisiana for Writs of Certiorari and Review,

which were denied on October 5, 1960 (Appendix D, *infra* Page 44).

The Trial Court rendered no written opinion.

JURISDICTION.

The original Opinion of the Court of Appeal for the Parish of Orleans, Louisiana, was rendered in each of the consolidated cases on November 30, 1959. The Opinion on Rehearing of the Court of Appeal for the Parish of Orleans, Louisiana, was rendered in each of the consolidated cases on June 8, 1960. Petition for Writs of Certiorari and Review filed by each of the Appellants herein with the Supreme Court of the State of Louisiana were denied on October 5, 1960. Notice of Appeal to this Court on behalf of Appellants was filed with the Court of Appeal for the Parish of Orleans, Louisiana, on December 23, 1960. Motion and Order enlarging the time for the docketing of these consolidated cases in the United States Supreme Court until March 21, 1961 was signed by the Court of Appeal for the Parish of Orleans, Louisiana, on February 8, 1961.

The jurisdiction of this Honorable Court to review the decision by direct appeal is conferred by 28 U.S.C. 1257 (2) (June 25, 1948, c. 646, 62 Stat. 929).

That the appeals in the instant cases lie properly from the Court of Appeal for the Parish of Orleans, Louisiana where the Supreme Court of Louisiana has refused Writs of Certiorari and Review to the State Court of Appeal

"for the reason that the Judgment is correct" is supported by the decisions of this Honorable Court in *Michigan-Wisconsin Pipe Line Co. vs. Calvert*, 347 U.S. 157, 74 S. Ct. 396 and *American Ry. Express Co. vs. Levee*, 263 U.S. 19, 44 S. Ct. 11, 12. As further indicated in *American Ry. Express Co. vs. Levee*, *supra*, the limit of time for applying to the Supreme Court of the United States was from the date when the Writ of Certiorari was refused (263 U.S. at pages 20-21, 44 S. Ct. at page 12). Writs of Certiorari and Review were denied by the Supreme Court of the State of Louisiana on October 5, 1960; and accordingly, pursuant to 28 U.S.C. 2101 (c) (June 25, 1948 c. 646, 62 Stat. 961; May 24, 1949, c. 139, § 106, 63 Stat. 104). Notice of Appeal was timely filed with the Court of Appeal for the Parish of Orleans, Louisiana within ninety (90) days from October 5, 1960, to-wit: on December 23, 1960.

The Court of Appeal, Fourth Circuit, in its original opinions and its opinions on rehearing specifically held that United States Currency does not contain the essence of negotiable instruments and recognized that this federal question was raised by Defendants. The Court thus implicitly held that United States Currency is not legal tender in just payment of all debts, public and private, 31 U.S.C. 462 to the contrary notwithstanding.

In addition the Honorable George Janvier, Presiding Judge of the Court of Appeal, Fourth Circuit, State of Louisiana has executed a "Certificate of Consideration of Federal Question" (Appendix E, *Infra* Page 45),

attesting to the fact that the Federal Question raised and argued before the Court of Appeal for the Parish of Orleans, was considered by the said Court, despite the fact that it was not adverted to in the decisions of the said Court. In the case of *Honeyman vs. Hanan,* 300 U.S. 14, 22; 57 S. Ct. 350, 353 this Honorable Court held:

> "Thus the true function of a certificate or statement of a state court, by way of amendment of, or addition to, the record, is to aid in the understanding of the record, to clarify it by defining the federal question with reasonable precision and by showing how the question was raised and decided, so that this Court upon the record as thus clarified may be able to see that the federal question was properly raised and was necessarily determined. Our decisions in cases where certificates have been found useful should be read in the light of that fundamental consideration. * * *"

This Honorable Court has frequently held that where it appears that a State Statute is drawn in question as repugnant to the Constitution, Laws or Statutes of the United States, and the decision of the Court was in favor of its validity, the United States Supreme Court has jurisdiction on appeal. *Charleston Federal Savings and Loan Ass'n. vs. Alderson,* 324 U.S. 182, 65 S. Ct. 624; *James Stewart & Co. vs. Sadrakula,* 309 U.S. 94, 60 S. Ct. 431.

STATUTES INVOLVED.

These proceedings were brought by Appellee under the provisions of Louisiana Civil Code Article 2139 which

appears in *West's L.S.A. Civil Code, Vol. 8, Article 2139,* as follows:

> "Art. 2139. Payment with stolen money or property
> Art. 2139. If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

Appellants have contended and here urge that Louisiana Civil Code Article 2139 is in conflict with *31 U.S.C. 462* (May 12, 1933, c.25, Title III, § 43 (b) (1), 48 Stat. 52; June 5, 1933 c. 48, § 2, 48 Stat. 113) which provides:

> "§ 462. Coins and currencies
> All coins and currencies of the United States (including Federal Reserve note and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

QUESTIONS PRESENTED.

(1) Whether the Court of Appeal for the Parish of Orleans, Louisiana failed to recognize that United States currency is legal tender for all debts, public and private, with the result that the Court's decision impairs the use of United States Currency in derogation of the Laws of the United States.

(2) Whether the Court of Appeal for the Parish of Orleans, Louisiana, reached improper and incorrect conclusions of law in support of its finding that the Negotiable Instruments Law of the State of Louisiana has no application to United States currency, despite the clear language of 31 USC 462 importing the highest degree of negotiability to United States currency.

STATEMENT OF THE CASE.

The respective actions filed by Appellee in the First City Court for the City of New Orleans were each dismissed by the Court on Exceptions of No Cause of Action, with no Judgment being rendered by the First City Court for the City of New Orleans on the merits.

The question of the conflict between Louisiana Civil Code Article 2139 and 31 U.S.C. 462 was accordingly not raised in the Lower Court and was presented for the first time in Briefs to the Court of Appeal for the Parish of Orleans. The Court of Appeal for the Parish of Orleans, in its original Opinion and in its Opinion on Rehearing, impliedly if not expressly adverted to the conflict between Louisiana Civil Code Article 2139 and 31 U.S.C. 462 by holding that United States Currency does not contain the essence of negotiable instruments. In addition a "Certificate of Consideration of Federal Question" was signed by the Honorable George Janvier, Presiding Judge of the Court of Appeal, Fourth Circuit, State of Louisiana (formerly Court of Appeal for the Parish of Orleans, State of Louisiana) (Appendix E. *infra*, Page 45), attesting to the fact that the Federal Question was re-

viewed and considered by the Court of Appeal for the Parish of Orleans; but the Court found that in its Opinion there was no conflict between the Louisiana Civil Code Article and the Federal Statute. It is thus submitted, that the Federal Question was timely raised, for the following reasons:

(1) That the first Court to rule on the merits of the case was the Court of Appeal for the Parish of Orleans, which reversed the Judgment of the Lower Court, dismissed the suits on Exceptions of No Cause of Action and rendered Judgment in favor of Plaintiff.

(2) That the Court of Appeal for the Parish of Orleans, Louisiana, by Certificate of its Presiding Judge has attested to the fact that the Federal Question presented was reviewed and considered, despite the fact that it is not referred to specifically in the Opinions of the Court.

(3) The conflict between the State Codal provision and the Federal Statute is apparent on its face and is inherent in the decisions.

The Briefs filed with the Court of Appeal for the Parish of Orleans, support the fact that the Federal Question was raised.

Under the Constitution of the State of Louisiana, the jurisdiction of the Supreme Court of the State of Louisiana was supervisory (Louisiana Constitution Article 7 Secs. 10, 11). The Court of Appeal for the Parish of Orleans, Louisiana, was thus, the Court of last resort

(Louisiana Constitution Article 7 Sec. 78—since superceded by Louisiana Constitution Article 7 § 29 effective Jan. 1, 1961) except for the necessity of Appellants invoking the supervisory jurisdiction of the Louisiana Supreme Court by applying for Writs of Certiorari and Review. Once the jurisdiction was declined, the Court of Appeal for the Parish of Orleans, Louisiana, was shown to be the highest Court of the State in which a decision could be had. In this connection, the Court's attention is directed to its decision authored by Mr. Justice Holmes in *American Ry. Express Co. vs. Levee, supra*, page 4, in which Justice Holmes analyzed a similar appellate situation in a case from the State of Louisiana.

Appellee brought suit against the Defendants to recover various sums which were paid to the Appellants by one Sam Davis to cover the balance due by Davis on pre-existing debts (Alatex Construction Service, Inc., $300.00; Community Finance Service, Inc., $486.50; Public Discount Company, Inc., $551.00). Appellee alleged that the payments were made by Davis with money stolen from Appellee (Ernest Crawford), and that, accordingly, Appellants were obliged to reimburse Appellee, pursuant to the provisions of Louisiana Civil Code Article 2139.

It was stipulated between Counsel for all parties at Transcript of Testimony, page 3, as follows:

> "It is further stipulated between Counsel for all parties that all Defendants received payments made to them by Sam Davis in good faith, without knowing of any defects as to title to the money or otherwise,

and that the payments were made and accepted in the normal course of business."

Plaintiff, who admitted that he and one Ophelia Johnson, were living together as husband and wife, claimed that the said Ophelia Johnson "stole" from a locked cedar robe a sum approximating $20,000.00. It was freely admitted by Appellee that the cedar robe was located in the home jointly occupied by Appellee and the said Ophelia Johnson, and where they were living as husband and wife (Transcript of Testimony, pages 5-7). Appellee took the position that he always kept the cedar robe locked and always kept the key to the cedar robe in his wallet, and that Ophelia Johnson apparently took the key from his wallet, and on July 8, 1954, stole the money from his cedar robe (Transcript of Testimony, pages 7-9).

Appellee further claimed that Ophelia Johnson turned over some of the stolen money to Sam Davis, with whom the said Ophelia Johnson had also been living. It was Sam Davis who made the payments to the Appellants herein that form the subject matter of these suits.

Louisiana Civil Code Article 2139 provides as follows:

"R.C.C. 'Art. 2139. If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid.'"

It is pursuant to this Article that Judgment was rendered in favor of Appellee and against Appellants.

However, all currency of the United States Government has printed upon it the following: "This Certificate is Legal Tender for all Debts, Public or Private".

Also, at the bottom of every piece of United States currency the following words appear: "will pay to the order of bearer on demand" or "in silver, payable to the bearer on demand".

31 U.S.C. 462, provides:

"§ 462. Coins and currencies

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. May 12, 1933, c. 25, Title III, § 43 (b) (1), 48 Stat. 52; June 5, 1933, c. 48, § 2, 48 Stat. 113."

The decisions allowing recovery on the part of Appellee herein are tantamount to a judicial pronouncement that United States currency was not in these cases legal tender in payment of all debts, public and private; and insofar as good faith receivers of the stolen money were concerned, the United States Federal Reserve Notes and Silver Certificates were not "payable on demand to bearer"—all in contravention of the provisions of 31 U.S.C., Section 462.

31 U.S.C. 462 was enacted pursuant to the powers granted to Congress in Article I, Section 8 of the United States Constitution, wherein Congress was authorized:

"* * *

To coin money, regulate the Value thereof, and of foreign Coin, and fix the Standards of Weights and Measures * * *

* * *."

It is submitted that the status of Federal currency is a matter exclusively within the control of the Federal Government, and that the states are powerless to enact legislation limiting the exchangeability of currency. 31 U.S.C. 462; *Legal Tender Cases* 79 U.S. 457, 545, 12 Wall. 457, 553 *Norman vs. Baltimore and O. R. Co.*, 294 U.S. 240, 55 S. Ct. 407.

The Court's attention is also directed to a Case Note appearing in a recent edition of the *Boston College Industrial and Commercial Law Review*, Vol. II, No. 1, Fall, 1960, at page 159, entitled "Currency-Negotiable Instruments Law-Recovery of Funds from Transferee of Thief—Crawford vs. Alatex Construction Service, Inc.". This Case Note reviews the cases that are now presented to this Court for its consideration and analyzes the impact of the decision of the Court of Appeal, Fourth Circuit, State of Louisiana, on United States currency in derogation of and in conflict with both the Statutes of the United States and the Negotiable Instruments Law.

It is the well settled law of this Nation that when the Congress of the United States has passed Legislation authorized by its granted powers and where at the same time a State has a conflicting law, the Federal Legislation shall be the supreme law of the land. Article VI, Clause 2 of the United States Constitution; *Case vs. Bowles*, 327 U.S. 92, 66 S. Ct. 438.

The Court of Appeal for the Parish of Orleans held in its original Opinion and reaffirmed in its Opinion on Rehearing as follows:

> "* * * We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments issue. The very first requirement of our negotiable instrument law is that the instrument must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery. The adoption of the N.I.L. has not in effect repealed Article 2139 of the Civil Code".

The Court thus advances the novel principles that: (1) money cannot be a negotiable instrument because it is used in paying other negotiable instruments, and (2) money is not a negotiable instrument because it is not *signed* by the maker, since a *facsimile stamp* is used for the signatures.

The United States Government now prints three types of paper money:

(1) Federal Reserve Notes (with green seals and numbers);

(2) United States Notes (with red seals and numbers); and

(3) Silver Certificates (with blue seals and numbers).

It is submitted that all of these mediums of exchange are legal tender for all debts, public or private, as indicated by the provisions of 31 U.S.C. 462.

They are the very essence of a Note or Negotiable Instrument and to hold otherwise, is to impair the efficacy of United States currency. The Federal Reserve Note bears on its face the term "Federal Reserve *Note*" and all pieces of currency bear the words "will pay to bearer on demand", words which embody the fundamental terminologies of a Negotiable Instrument.

The Court is referred to 7 *Am. Jur. p. 909* Verbo Treasury Notes. The authors there state:

> "Treasury notes of the United States are deemed negotiable instruments, and their transferability is subject to the commercial law of other paper of that character."

What do these notes and Silver Certificates represent? Clearly, they represent the silver or the collateral securities in the form of notes, drafts, bills of exchange or gold certificates or direct obligations of

the United States, which stand behind them. It is submitted that negotiable instruments issue "for something of value" and that currency merely stands in the place of that "something of value", to-wit: silver or collateral securities in the form of notes, drafts, bills of exchange or gold certificates or direct obligations of the United States. It is a medium of exchange, legal tender, or in other words, a practical and convenient means of transferring that which is of value. Again it is submitted that United States currency in the form of Federal Reserve notes and United States notes or Silver Certificates are the essence of all negotiable instruments.

The Opinion of the Court of Appeal for the Parish of Orleans, to the effect that currency cannot be classified as a negotiable instrument "because it is not signed by the maker" is without merit since it has been universally recognized that in the absence of a Statute otherwise providing a signature may be affixed by writing by hand, by printing or by various other means. 80 C.J.S., page 1292, Verbo: Signatures. Indeed, most Bearer Bonds in circulation in the United States today bear facsimile signatures.

By Acts of 1904, No. 64, the Legislature of Louisiana enacted the Negotiable Instruments Law which exists to this day (Louisiana Statutes Annotated 7:1-7:195).

Louisiana Statutes Annotated 7:195 provides:

> "§ 195 Law Merchant to Govern Cases not Provided For
>
> In any case not provided for in this chapter the rules of the law merchant shall govern".

As indicated by the author in *Boston College Industrial and Commercial Law Review*, Vol. II, No. 1, Fall, 1960, at page 160, one of the basic concepts of the law merchant has been that money is rfeely exchangeable with the consequence that an owner has no cause of action against a good faith taker of stolen funds. *Miller vs. Race*, 1 Burrow 452, 457, 97 Eng. Rep. 398 (K.B. 1758).

The holding of the Court of Appeal for the Parish of Orleans, Louisiana, that United States currency is not a negotiable instrument within the meaning and intent of the Louisiana Negotiable Instruments Law has the effect of derogating from the Statutes and Laws of the United States which clearly indicate that United States currency is legal tender (and thus a Negotiable Instrument) in payment of all debts, public and private.

It is submitted that Louisiana Civil Code Article 2139 is in direct contravention of 31 U.S.C. 462, and that the Federal Statute should prevail.

THE FEDERAL QUESTION IS SUBSTANTIAL.

This appeal challenges the validity of a State Statute sustained by the highest Court of the State before which these cases could properly be brought and raises a substantial Federal Question. *Reconstruction Finance Corp. vs. Beaver County, Pa.*, 328 U.S. 204, 66 S. Ct. 992. The foundation of the economy of this Nation rests upon the free and unhampered negotiation and free exchange of United States currency. The Court of Appeal for the Parish of Orleans has placed a restriction

upon the free circulation and use of United States currency for the payment of all debts, public and private by decreeing that Louisiana Civil Code Article 2139 permits a person from whom money is stolen to recover it in the hands of a good faith receiver—all despite the existence of 31 U.S.C. 462, which provides that United States currency shall be legal tender in payment of all debts, public and private.

It is submitted that the Federal Question is substantial.

Respectfully submitted,

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APPENDIX A.

ERNEST CRAWFORD,

v.

ALATEX CONSTRUCTION SERVICE, INC.

(Consolidated with No. 21245 and No. 21246.)

No. 21244.

Court of Appeal of Louisiana.

Orleans.

Nov. 30. 1959.

On Rehearing June 8, 1960.

(Reported at 120 So.(2d) 845.)

JOHNSON, Judge pro tem.

Plaintiff's petition in this case in the First City Court of New Orleans alleges that on or about July 21, 1954, one Sam Davis paid unto defendant $300, the amount in which he was in default upon a preexisting debt owed by him to defendant; that Sam Davis, alias Carl Williams, was without funds to make such payment and that the money with which the payment was made had been stolen from plaintiff by Sam Davis acting in concert and conspiracy with others. Defendant's answer admits that the payment in the amount and on

the date was made "on account of a debt owed by said Sam Davis to defendant". At the same time plaintiff filed two other suits on the exact same allegations but for different amounts. One is against Community Finance Service, Inc. to recover $486.50 and the other is against Public Discount Co., Inc. to recover $551. Counsel for each of these defendants admitted that Sam Davis made the payment but denied all other allegations. Counsel for defendant, Alatex Construction Service, Inc., on the day of the trial orally entered an exception of no cause of action. Counsel for defendant, Community Finance Service, Inc., filed exceptions of no right or cause of action with his answer, and counsel for Public Discount Co., Inc. filed exceptions of vagueness and of no right or cause of action with his answer. The three cases were consolidated for trial. All exceptions were referred to the merits. After trial on the merits, the trial court rendered separate judgment in each case sustaining the exception of no cause of action and dismissed plaintiff's suit. Plaintiff has appealed and the three cases were consolidated in this court for argument.

Ernest Crawford, plaintiff, was the only witness called to testify in person at the trial. In addition to Crawford's testimony counsel for plaintiff offered and filed in evidence four exhibits, to-wit: the depositions of Ophelia Lewis Johnson and Sam Davis (P-1); a stipulation by the attorneys for Ophelia Johnson and Sam Davis and Jack C. Benjamin, the Assistant United States Attorney for the Eastern District of Louisiana (P-2); a memorandum by Jack C. Benjamin, the Assist-

ant U. S. Attorney, filed in a criminal prosecution by the United States vs. Ophelia Johnson and Sam Davis (P-3); and a memorandum by the Circuit Judge for the County of Van Buren, State of Michigan, being the written reason for judgment in that court in a suit in that court by Ernest Crawford vs. Ophelia Lewis, Alias Ophelia Johnson, Alias Mamie Williams, and Sam Davis, Alias Carl Williams (P-4).

These four exhibits were offered and filed in evidence by agreement and stipulation of counsel for all defendants as to the authenticity of each document but without admitting the facts and law contained therein. Such an agreement and stipulation as to the authenticity of the documents relieved the party offering them in evidence of the necessity of calling witnesses to lay the proper foundation as to authenticity of the documents. There was no objection made by any counsel as to the materiality, and relevancy or the admissibility of the contents of the documents and the whole of each document is in evidence and furnishes a part of the transcript and record as fully as though the documents had been copied into the transcript by the court reporter. P-3 and P-4 consist mostly of argument rather than evidence. Counsel for defendant did not call any witnesses or offer any evidence.

The evidence discloses that plaintiff owned property which the City of New Orleans expropriated for a consideration of $18,000, of which amount plaintiff actually received in his attorney's office $17,500 in cash in seventeen $1,000 bills and $500 in smaller denomina-

tions; that plaintiff already possessed about $3,000 in cash; that he put the money together, amounting to something over $20,000, and kept it in a cedar robe under lock in his home; that he was living at that time with Ophelia Lewis Johnson, as man and wife, though they were not married; that Ophelia Lewis was separated but not divorced from her lawful husband Johnson; that plaintiff kept the keys to his home and to the cedar robe on the same key ring in his wallet which he carried in his pocket; that on July 8, 1954, when he returned from work he found the house locked; that he opened his wallet to get the house key and discovered for the first time that the keys to his house and to the cedar robe were missing; that upon gaining entrance to the house Ophelia and her two small children and their clothes were gone; that he forced open the door to the cedar robe and his money was also gone.

Additional evidence reveals a somewhat fantastic scheme of facts and circumstances of a well laid and adroitly executed plan of conspiracy by Ophelia and Davis in which they took plaintiff's money and appropriated it to their own use. Within a remarkably short period of time they were located in the State of Michigan ensconced under assumed names (Mamie Williams and Carl Williams), in an $8,000 home furnished with modern and expensive furniture all bought with plaintiff's money. It is apparent that only good detective work prevented the theft and escape from being a complete success.

While defendants' answers in all of these consolidated cases are in the form of general denials, the court in maintaining the exception of no cause of action accepted as true the well pleaded facts of plaintiff's petition as the law requires. We find, also, that the evidence fully supports plaintiff's allegations. Actually, in this court counsel for defendants do not dispute that the preëxisting debts of Sam Davis were paid with money stolen from this plaintiff with Davis' full knowledge of the theft. A further recitation of the undisputed evidence would be quite lengthy and under the circumstances would serve no useful purpose. Counsel for defendants rested their defense on the admitted good faith of all the defendants and upon common law jurisprudence, except for one Louisiana case which will be referred to hereinafter and Article 2138 of the Civil Code, LSA.

When seeking to resolve a dispute in Louisiana we must first look at the laws of this state to find if there are any provisions of Louisiana law determinative of the issue. If there is we are compelled to apply and follow that law before looking to foreign court decisions. There is positive Louisiana law applicable to the facts in these consolidated cases. It is Civil Code, Article 2139, LSA., which reads as follows:

> "If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

The language of this provision is so clear and unambiguous that we must be governed by it, unless

there has been some radical departure in the English translation from the original text which does not bring into English a clear meaning of the law. We find no such error. The slight discrepancy in translation referred to hereinafter does not actually alter the meaning and apparent intent from the original text. There is some temptation here to indulge in more extensive study and review of the expressions of early authorities and text writers which may be said to constitute the legal history and development of comparative provisions of our Civil Code. The brief of counsel for plaintiff contains a short summary which we deem sufficient for the purpose here presented and we copy that portion of the brief as follows:

> "In regard to this version of Article 2139 the Louisiana State Law Institute commented in West Louisiana Civil Code Annotated,
>
> "'History and Text of Former Codes RCC 1870, Art. 2139:
>
> "'(Error in English translation of French text—the words "If money, or other stolen property, be given in payment" should be "If the money or other articles with which payment is made are stolen".)'
>
> "The judgment of the Louisiana Law Institute in this regard is fortified by reference to the Projet of the Civil Code of 1825 as published in the Louisiana Legal Archives, Volume 1, page 282 in which the predecessor of Article 2139 is set out in its original correct form together with the original French text as follows:

"'If the money or other articles with which payment be made are stolen, the payment is not good, and the owner may recover the amount paid.'

"'Si l'argent ou les autres effets qui ont ete donnes en payement, ont ete voles, le payement n'est pas volable, et le proprietaire pourra recouvrer le montaut de ce qui a ete paye.'

"These two articles in the Projet were later assigned the number 2135 in the Code of 1825. In connection with the question of the correct version of this article, the law is settled in Louisiana that in case of conflict the French text shall prevail since the original draft was in French, the English being a translation of the French. (Sample v. Whitaker, 1931, 172 La. 722, 135 So. 38; Straus v. City of New Orleans, 1928, 166 La. 1035, 118 So. 125; Phelps v. Reinach, 1886, 38 La. Ann. 547. See also Dubuisson, the Codes of Louisiana, 25 Rep. of Louisiana Bar Association 143, 146 (1924)).

* * * * * * * *

"In regard to the preceding code article, the defendants have argued to the lower court that the two articles are in conflict. The preceding article, Article 2138 of the Revised Code of 1870, reads as follows:

"'If the debtor give a thing in payment of his obligation, which he has no right to deliver, it does not discharge his obligation, and the owner of the thing may reclaim it in the hands of the creditor, unless the obligation has been discharged by the payment of money, or the

delivery of some of those things which are consumed in the use, and the creditor has used them; in which case neither the money nor the things consumed can be reclaimed, and the payment will be good.'

"Article 2138 appeared only in a slightly different form in the Code of 1825, the Code of 1808 and the Code Napoleon of 1804. (See Article 2134 of Code of 1825; Article 138, Sec. 1, Chapter V, Title III, Book III of Code of 1808; Article 1238, Sec. 1, Chapter V, Title III, Book III of Code Napoleon of 1804.) Comments on this Article can be found in the French commentators, notably Pothier. (See Pothier, Treatise on the Law of Obligations, Vol. 1, Part 3, Chapter 1, Art. 3, Sec. 3, page 407 and Part 3, Chapter 1, Art. 1, number 459.)

"Art. 2138 contains three distinct principles, the third being an exception to the first two:

"First, the debtor who possesses without title cannot extinguish his obligation by giving in payment that which he has no right to deliver.

"Second, the true owner, 'le proprietaire', may reclaim what he owns in the hands of the creditor.

"Third, neither of the above principles apply if the payment was money or those things consumed in use and the creditor has used them.

"Plaintiff submits that this article, considered alone, may include all debtors who possess by any conceivable mode of acquisition lawful or unlawful. The debtor of 2138 may possess by

lease, pledge, as agent or overseer, as well as by trickery, theft, embezzlement or robbery, with violence or without, in bad or good faith. Article 2138 merely treats broadly of the debtor who 'gives a thing in payment * * * which he has no right to deliver.'

"However, in 1825, Article 2135 (later to become 2139 of the Revised Civil Code of 1870) was added 'as an amendment' to Article 138 of the Code of 1808. This article adds one narrow exception to the three principles of the foregoing article. It limits the type of acquisition by the debtor and thereby adds an exception to the third principle above stated. If the debtor pays with stolen money then the third principle does not apply and the first two do apply.

"Plaintiff submits that there is no conflict whatever between the two articles, one dealing with the possessor without title in the broadest sense and the other treating of a singular, narrow breed of debtor and possessor * * * the thief.

"That the redactors of the Projet of 1825 were concerned with stolen goods should not be a startling idea. The French Code Napoleon provides:

"'* * * the party who has lost anything, or from whom it has been stolen, may reclaim it within three years, computing from the day of the loss or robbery, against the party in whose hands he finds it; saving to the latter his remedy against the person from whom he obtained it.' French Civil Code Art. 2279.

"The Louisiana Code of 1808 similarly provides:

"'Art. 75. If a man has had a public and notorious possession of a moveable thing, during three years, in the presence of the person who claims the property of the thing, said person being a resident within the territory, is presumed to have known the circumstance of the possession and the property becomes vested in the possessor, unless the thing has been stolen.' Art. 75, Sec. III, Chapter III, Title XX, Book III, Code of 1808.

"This article has come down to us as the present day article 3506 of the Code of 1870.

"Further, the special rule applying to stolen goods can also be traced to the Spanish antecedents of the Code of 1825. It is established historical fact that: '* * * the Civil Code (of 1808) did not contain many and important provisions of the Spanish laws still in force,' at that time * * * and, as the Supreme Court held in Cottin v. Cottin, 5 Mart., O.S., 93, '* * * such parts of those laws only are repealed as are either contrary to, or incompatible with the provisions of the Code'. 'It thus appeared that a much greater portion of the Spanish laws remained in force than had been at first supposed.' (Preface by L. Moreau Lislet and Henry Carleton, to 'Las Siete Partidas' still in force in Louisiana in 1820.) One of the provisions of the Spanish laws in force after the adoption of the Code of 1808 and prior to the revision of 1825 was:

'If a man be forcibly deprived of a thing, he has his election to bring his action for it either against him who is in possession or the person who deprived him of it.' Partida Third, Title II, Law 30, Liset and Carletons Partidas, page 50.

"With such a background in the French and Spanish Codes, it is difficult to maintain that a special rule in regard to stolen money was an error—or an oversight—or 'in conflict' with a preceding article.

"Further, examination of an original print of the Projet of 1825, now in the possession of Tulane Law Library shows that the two articles were considered together to be an 'Amendment to Article 138' of the Code of 1808. Certainly this indicates a deliberate consideration of the exception as to 'stolen money' by Livingston, Derbigny and Lislet rather than a 'mistake' by the jurisconsults.

"The position of the defendants and the ruling of the Trial Judge would, if supported by this Court, completely invalidate Article 2139. Plaintiff submits that such a result would do violence not only to the plain and unambiguous text of this article but also would be contrary to both the jurisprudence and those code articles which deal with the legal interpretation of our statutes and laws. The entire Chapter 4 of the Code on the application and construction of laws is pertinent in the interpretation of Article 2139 and leaves little doubt but that the Courts of this State should not disregard the plain text of a law. Further the Supreme Court

in Chappuis v. Reggie [1952, 222 La. 35], 62 So.2d 92, at page 95 has held:

"'The uniform jurisprudence is to the effect that all statutory provisions are to be given effect whenever possible. LSA—Civil Code of Louisiana, Art. 17: State v. Texas Co., 205 La. 417, 17 So.2d 569; Town of Abbeville v. Police Jury, 207 La. 779, 22 So.2d 62; Melancon v. Mizell, 216 La. 711, 44 So.2d 826. If acts can be reconciled by a fair and reasonable interpretation, it must be done, since the repeal of a statute by implication is not favored and will not be indulged if there is any other reasonable construction. Town of Abbeville v. Police Jury, supra; State v. Standard Oil Co. of La., 188 La. 978, 1054, 178 So. 601; Mouledoux v. Maestri, 197 La. 525, 2 So.2d 11; State v. Jones, 220 La. 381, 56 So.2d 724. Moreover, where two acts relating to the same subject are passed at the same legislative session, there is a strong presumption against implied repeal and they are to be construed together, if possible, so as to reconcile them, giving effect to each. State v. Shushan, 206 La. 415, 19 So.2d 185; City of New Orleans v. Board of Supervisors of Elections, 216 La. 116, 43 So.2d 237. In the latter case this court quoted with approval the following language: "Where it is possible to do so, it is the duty of the courts, in the construction of statutes, to harmonize and reconcile laws * * *. These rules are particularly applicable to statutes passed at or about the same time or at the same session of the legislature, since it is not to be presumed that the same body of men would pass conflicting and incongruous acts." 216 La. at pages 144-145, 43 So.2d at page 246'."

Therefore, if there is any conflict of interpretation in Articles 2138 and 2139 the clear mandate contained in Article 2139 must prevail for the reasons shown in the above quotation from counsel's brief, and we are compelled to apply it.

It is the duty of the court to endeavor to give effect to both articles rather than to select one over the other and say only one of these two articles can be enforced. To that end there is at least a semblance of plausibility in the thought that the provisions of Article 2138 are dealing with things and money in kind. There could exist a situation where the lawful owner could actually identify the thing or the very identical pieces of money before such thing or money has been used or disposed of and his ownership could form the basis of a conservatory writ to prevent the use or disposition of the thing or money pending his suit to recover them. If such thing or money cannot be identified and arrested in kind before being consumed in use then there is no way to recover them in kind. Moreover, it is plausible to say that this article does not contemplate that the commission of a felony as such is the only cause which gives the debtor "no right to deliver" the thing or money in payment. On the other hand, article 2139 says squarely that if the money or other property given in payment be stolen then the owner may recover "the amount" paid. We must take the law as we find it. Article 2139 deals with recovery of the amount or value of the owner's claim rather than recovery of the identical thing or money in specie under Article 2138. Also, under Article 2138 there may be some

reason other than theft why the debtor has no right to use the thing or money of another to make payment of his own debt. Under Article 2139 if the debtor has stolen the money or property used in payment then the owner can recover the amount or value of it from the creditor.

Counsel for defendants cited such common law authorities as 36 Am.Jur. p. 460, Sec. 6; 40 Am.Jur. p. 747, Sec. 49; 114 A.L.R. 382; 58 C.J.S. Money Received § 13, p. 923, where it is reported that the weight of authority that money paid in due course of business for valuable consideration and received in good faith cannot be recovered by the person from whom the money was stolen by the debtor. Counsel does not refer to the law of any state that would be comparable to Article 2139 of our Code and such jurisprudence does not control in the light of a positive contrary provision of Louisiana law on the subject at issue. Counsel for defendants also rely heavily on the decision in First National Bank of Birmingham, Ala. v. Gibert & Clay, 123 La. 845, 49 So. 593, 25 L.R.A., N.S., 631. In that case defendants, Gibert and Clay, were cotton brokers. The bank paying teller, Chisholm, engaged in extensive gambling speculation in cotton futures bought on margin in the name of S. M. Webster who Chisholm said was a depositor in the bank and whom he claimed to represent as agent. It is not clear whether Webster was a fictitious name or that Chisholm did represent a person by that name. The court in that case said that made no difference. If there was no such person as Webster, and Chisholm had no withdrawals by Webster on his account, then Chisholm,

as paying teller, lifted $97,550 in cash in various smaller amounts at different times to pay his losses on current contract, and the bank sued for the amount, less $45,550 which Chisholm had returned. The basis of that suit was plaintiff's allegations that the defendants well knew that Chisholm was paid only a small salary of $2,000 a year and was in poor financial circumstances; that defendants induced him to make the purchases and knew that the money which he paid belonged to the bank. The court held that these allegations were not proven, and said the bank itself had not exercised due diligence. The authority in that decision for judgment against the plaintiff was an Illinois case in which the facts were closely similar where the Illinois court held that bad faith alone will defeat the right of the taker. Counsel for defendants here maintain that the First National Bank case decided by our Supreme Court in 1909 settles definitely and beyond question in this state the issue here presented. It requires only a cursory reading of that decision to find that, regardless of whose money it was, Chisholm did not use it to pay his own preëxisting debt but paid it out over the paying teller's counter at the bank to cover current gambling contracts, and further that the Court in that case did not discuss nor refer to and evidently did not consider the provisions of Article 2139 of our Civil Code LSA. Counsel for defendants contend that the plaintiff in the cases now before us placed Ophelia Johnson in position to steal the money by according to her the position of a wife with the right of access to the contents of the home. We cannot agree with that premise; for one thing, she did not have access to the

cedar robe. Of course, one might say that plaintiff should not have kept that money in cash. We cannot deny that he had a legal right to do so. A statement in one of plaintiff's exhibits refers to some disastrous experience the plaintiff at one time had when his bank deposit had been frozen, and that is given as the reason for not putting the money on deposit. He must have thought it safe in his home under lock with the key in his pocket. The money was stolen, and under the facts of these cases, we think he should recover from defendants the amounts of those payments made by Sam Davis.

Counsel for defendants also rely upon our negotiable instruments law on the theory that United States currency is nothing more nor less than negotiable instruments. Counsel assert that currency is the "essence of all negotiable instruments". We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments issue. The very first requirement of our negotiable instrument law is that the instrument must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery. The adoption of the NIL has not in effect repealed Article 2139 of the Civil Code, LSA.

For these reasons the judgment in the case numbered and entitled first above is reversed and annulled.

Judgment is now rendered in favor of the plaintiff, Ernest Crawford and against the defendant, Alatex Con-

struction Service, Inc., in the full sum of $300 with legal interest from date of judicial demand and for all costs.

Reversed.

REGAN, J., absent.

JANVIER, Judge (concurring).

I agree fully with everything which appears in the controlling opinion and I would not have it believed that the offering of a concurrence evidences even the slightest disagreement.

I write this in the hope that there will be accentuated the fact that even under Civil Code, Article 2139; LSA, two things are essential if the owner of the thing or of the money is to recover it back. First, it is essential that the money or the thing must have come into the physical possession of the user illegally, and, second, that the money or the thing must have been used in an attempt to extinguish a preexisting obligation. If an agent or a bank teller or a store collector or anyone else into whose possession money has legally come uses it to retire a preexisting debt, or for any other purpose of his own Article 2139 has no application.

The second point which I would accentuate is that even Article 2139 does not authorize the recovery of

stolen money or things except where they are used in an effort to extinguish a preexisting debt. Both of these articles (articles 2138 and 2139) appear under Title IV, Chapter 5, which chapter treats "Of The Manner In Which Obligations May Be Extinguished." And it should be noted that both of these articles provide that under certain conditions the preexisting debt or obligation of the user is not extinguished. Under Article 2138 if the debtor attempts to extinguish his obligation by giving something which he has no right to give, "it does not discharge his obligation." Under Article 2139 if the debtor attempts to extinguish his obligation by the delivery of stolen money or other property, "the payment is not good."

Thus in either case the articles apply only where the money or the thing is used to extinguish a preexisting obligation. If a person walks into a store and purchases an article and gives in payment money which he has stolen, the store need not investigate to make certain that the money was not stolen. It is only where, as in the cases before us, the money was used in an attempt to extinguish a preexisting obligation that Article 2139 has application.

For these reasons I respectfully concur.

On rehearing

McBRIDE, Judge.

We granted a rehearing in this case, as well as in Crawford v. Community Finance Service, Inc., 120 So.2d 854, and Crawford v. Public Discount Co., Inc., 120 So.2d 855, the instant case having been consolidated with the two cases lastly mentioned because we were not satisfied with our original views that the defendant herein, who accepted the stolen money in good faith and without knowledge of its origin, was not protected by the theory that money and currency is highly negotiable and "has no earmarks," or by the terms of our own Negotiable Instruments Law (Act 64 of 1904), LSA-R.S.7:1 et seq.

We adhere to our previous findings of fact which are lucidly set forth in the original opinion and feel sure that we have placed the correct interpretation on the focal article of the LSA—Civil Code 2139.

In our original opinion we said:

> "Counsel for defendants also rely upon our negotiable instruments law on the theory that United States currency is nothing more nor less than negotiable instruments. Counsel assert that currency is the 'essence of all negotiable instruments.' We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments

> issue. The very first requirement of our negotiable instrument law is that the instrument must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery. The adoption of the NIL has not in effect repealed Article 2139 of the Civil Code."

We are firmly convinced that United States currency and silver certificates are not such instruments as to come within the purview of the Negotiable Instruments Law, possibly not for the reason stated in our original opinion but for the reason that such are not commercial paper which this law was designed to cover.

Great stress was laid on the fact that the defendant accepted the money in question in due course of business, and that if we were to hold that the victimized owner of the money had a right to recover the amount from the innocent receiver, the verity of many business transactions would be destroyed and chaotic conditions would ensue.

This might be perfectly true, but regardless of the hardship visited upon defendant, which in good faith accepted the stolen money in payment of an antecedent debt, this court cannot overlook the provisions of LSA-C.C. art. 2139, which in unambiguous terms provides:

> "If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

Notwithstanding that it must be said that the defendant herein innocently received the stolen money from the thief, the owner thereof has his right to recover the amount from the defendant. To say otherwise would be to write out of the Civil Code entirely the above-quoted article.

We are of the firm opinion that we were correct in our original conclusions, and therefore our original decree is reinstated and made the final judgment of this court.

Original decree reinstated.

JANVIER, Judge (dissents).

I have not abandoned my view that Article 2139 of our LSA-Civil Code should be interpreted to mean that, where it can be shown that the identical money which is used in an effort to discharge a preexisting debt has been stolen—as distinguished from embezzled—the debt is not discharged and the money, if identified, may be recovered by the owner from the creditor who received it and that this interpretation should be placed on the article even though the creditor may have had no knowledge that the money was stolen. But I cannot now be persuaded that the adoption of the Negotiable Instruments Law (Act 64 of 1904) LSA-R.S. 7:1 et seq., did not to all intents and purposes repeal Article 2139.

There can be no doubt that, prior to the adoption of the Negotiable Instruments Law, money under the common law, the Law Merchant, was negotiable and that the purpose of the Negotiable Instruments Law was to Codify the Law Merchant so far as negotiable paper is concerned, and I feel that in adopting the Negotiable Instruments Law we, in Louisiana, have adopted the concept of full negotiability of money under the common law and that consequently an instrument which calls for payment in money is negotiable and that when it is discharged by the payment of money, which is also negotiable, this money is not subject to the claim of anyone else, when there is no knowledge of any defect which may exist in the title to the money as the result of theft.

I respectfully dissent.

APPENDIX B.

ERNEST CRAWFORD,

v.

COMMUNITY FINANCE SERVICE, INC.

(Consolidated with No. 21244 and No. 21246.)

No. 21245.

Court of Appeal of Louisiana.

Orleans.

Nov. 30, 1959.

On Rehearing June 8, 1960.

(Reported at 120 So.2d 854.)

JOHNSON, Judge pro tem.

For the reasons given in the consolidated case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, in this Court, the judgment of the trial court is reversed and annulled, and there is now judgment herein in favor of plaintiff, Ernest Crawford and against Community Finance Service, Inc., in the full sum of $486.50, together with legal interest thereon from date of judicial demand until paid and for all costs in both courts.

Reversed.

REGAN, J., absent.

JANVIER, Judge (concurring).

For the written reasons assigned by me in Crawford v. Alatex Construction Service, Inc., La.App., 120 So.2d 852, I respectfully concur.

On Rehearing

McBRIDE, Judge.

For the reasons stated in our opinion handed down on rehearing this day in the case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, it is ordered, adjudged and decreed that our original decree herein be reinstated and made the final judgment of this court.

Original decree reinstated.

JANVIER, Judge (dissents).

For the written reasons given in my dissenting opinion in Crawford v. Alatex Construction Services, Inc., 120 So.2d 852, on rehearing, I respectfully dissent.

APPENDIX C.

ERNEST CRAWFORD,

v.

PUBLIC DISCOUNT CO., INC.

(Consolidated with No. 21244 and No. 21245.)

No. 21246.

Court of Appeal of Louisiana.

Orleans.

Nov. 30, 1959.

On Rehearing June 8, 1960.

(Reported at 120 So.2d 855.)

JOHNSON, Judge pro tem.

For the reasons given in the consolidated case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, in this Court, the judgment of the trial court is reversed and annulled, and there is now judgment herein in favor of plaintiff, Ernest Crawford and against Public Discount Co., Inc. in the full sum of $551 with legal interest from date of judicial demand until paid and for all costs in both courts.

Reversed.

REGAN, J., absent.

JANVIER, Judge (concurring).

For the written reasons assigned by me in Crawford v. Alatex Construction Service, Inc., La.App., 120 So.2d 852, I respectfully concur.

On Rehearing

McBRIDE, Judge.

For the reasons stated in our opinion handed down on rehearing this day in the case of Crawford v. Alatex Construction Service, Inc., 120 So.2d 845, it is ordered, adjudged and decreed that our original decree herein be reinstated and made the final judgment of this court.

Original decree reinstated.

APPENDIX D.

Denial of Writs by Supreme Court of Louisiana.

(1) Alatex Construction Service, Inc.

SUPREME COURT OF LOUISIANA

New Orleans.

BY HAWTHORNE, J: October 5, 1960.

No. 45,307.

ERNEST CRAWFORD,

v.

ALATEX CONSTRUCTION SERVICE, INC.

In re: Alatex Construction Service, Inc. applying for certiorari or writ of review to the Court of Appeal, Fourth Circuit, Parish of Orleans.

Writ denied.

The judgment of the Court of Appeal is correct.

/s/ FWH
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ RAV
/s/ LPG
/s/ HFT

APPENDIX D—Continued:

(2) Community Finance Service, Inc.

SUPREME COURT OF LOUISIANA.

New Orleans.

BY HAWTHORNE, J: October 5, 1960

No. 45,389.

ERNEST CRAWFORD,

v.

COMMUNITY FINANCE SERVICE, INC.

In Re: Community Finance Service, Inc. applying for certiorari or writ of review to the Court of Appeal, Fourth Circuit, Parish of Orleans.

Writ Denied.

The judgment of the Court of Appeal is correct.

/s/ FWH
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ RAV
/s/ LPG
/s/ HFT

APPENDIX D—Continued:

(3) Public Discount Company, Inc.

SUPREME COURT OF LOUISIANA.

New Orleans.

BY HAWTHORNE, J: October 5, 1960.

No. 45,308.

ERNEST CRAWFORD,

v.

PUBLIC DISCOUNT COMPANY, INC.

In Re: Public Discount Company, Inc. applying for certiorari or writ of review to the Court of Appeal, Fourth Circuit, Parish of Orleans.

Writ Denied.

The judgment of the Court of Appeal is correct.

/s/ FWH
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ RAV
/s/ LPG
/s/ HFT

APPENDIX E.

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA.

Nos. 21244, 21245, 21246, Consolidated.

ERNEST CRAWFORD,

vs.

ALATEX CONSTRUCTION SERVICE, INC., COMMUNITY FINANCE SERVICE, INC., PUBLIC DISCOUNT COMPANY, INC.

FILED: Feb. 28, 1961. /s/ M. J. KEENAN
CLERK

CERTIFICATE OF CONSIDERATION OF FEDERAL QUESTION.

I, the undersigned, GEORGE JANVIER, Presiding Judge of the Court of Appeal, Fourth Circuit (formerly Court of Appeal for the Parish of Orleans) hereby certify that Counsel for Defendants in the above, entitled and numbered proceedings in Briefs and in Oral Arguments before this Court on original Hearing and on Rehearing urged the Court to decree that Louisiana Civil Code Article 2139 is in conflict with a Statute of the United States, to-wit: 31 U.S.C.A. 462 (May 12, 1933, c25, Title III, § 43 (b) (1), 48 Stat. 52; June 5, 1933, c48, § 2, 48 Stat. 113) and that the Federal Statute should prevail.

That whereas the aforesaid Federal Question was presented to this Court and whereas neither the presentation of said Question nor the consideration of said Question by this Court was referred to in either the original Opinion or the Opinion on Rehearing reported at 120 So.(2) 845 and 120 So. (2) 852, respectively, the said Federal Question was reviewed and considered by this Court but Article 2139 was not found to be in conflict with the Federal Statute as urged by Counsel for Defendants.

New Orleans, Louisiana, February 28, 1961.

/s/ GEORGE JANVIER
(George Janvier)
Presiding Judge, Court of Appeal, Fourth Circuit, State of Louisiana